

Serial No.: 10/821,521

REMARKS

Applicants elect to prosecute in this Patent Application the allegedly distinct species of Group I (i.e., Claims 1-4, 9, 10, 12-15, 17-38 and 40-43), drawn to an acoustic transducer comprising a diaphragm and a ferromagnetic frame. Applicants strongly urge that allegedly distinct species of Group II (i.e. Claims 1, 5-6, 16 and 66-67), drawn to embodiments with a fin are not patentably distinct from Group I for among other reasons the Examiner has listed Claim 1 in both Groups I and II. Applicants' election with is with traverse because it is untimely and the Examiner has already given an Office Action on the merits regarding Group II. Applicants' election is with further traverse because the Examiner has not met the burden of showing how Group III (i.e. Claims 69-71) is patentably distinct over Group I.

Applicants have withdrawn Claims 69-71. Should any fee be required, Applicants urge that the Commissioner charge Deposit Account 19-3550 for any such fee.

Request for Telephone Interview

Applicants urge that this Amendment is fully responsive to the pending Office Action and that the subject U.S. patent application is allowable. Should any issue remain, Applicants urge the Examiner to contact the undersigned at 847.490.1400.

Traversal of Restriction Requirement

Regarding the untimely restriction requirement of Group II, this Patent Application has already had a first action on the merits in a non-final Office Action mailed 04 May 2007. Applicants' response to the first action on the merits included amendments to the claims but did not add or change the previously presented Claims of Group II. Therefore, the Examiner has previously considered all the limitations of the claims that the present restriction requirement is now imposed upon regarding Group II.

While 37 § CFR 1.142 states a restriction requirement "will normally be made before any action upon the merits; however, it may be made at any time before final action." MPEP § 811 further states "[b]efore making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required." The Examiner should issue a restriction requirement if there is a serious burden.

In this case, the Examiner already considered all the members of the Group II in the first action on the merits. Thus, there is not a serious burden if the restriction requirement is not imposed. Put another way, since the Examiner previously searched these limitations in the original claims and the Applicants' did not add unexamined limitations to the claims of Group II in the filed amendment, there is no additional burden on the examiner.

Serial No.: 10/821,521

Furthermore, the Examiner has not provided other indications of the serious burden on the examiner for the restriction of Group III, such as "by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02." (MPEP § 803). In this case, the Examiner asserts on page 2 of the Restriction Requirement that the species are independent or distinct because the claims recite a non-ferromagnetic frame. The Examiner has not shown that these agents or embodiments have a separate status in the art.

Accordingly, for at least the reasons stated above, the Restriction Requirement of Groups II and Group III is improper and should be withdrawn.

Serial No.: 10/821,521

Conclusion

Applicants believe the above remarks are fully responsive to the Office Action mailed 20 October 2007. Should the Examiner detect any remaining issue, Applicants kindly request the Examiner to contact the undersigned, preferably by telephone.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. D. Erickson', with a stylized flourish at the end.

Kevin D. Erickson
Reg. No. 38,736

Pauley Petersen & Erickson
2800 West Higgins Road
Suite 365
Hoffman Estates, Illinois 60169
TEL (847) 490-1400
FAX (847) 490-1403